Election/Restriction

The Office Action states that "[r]estriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-9, drawn to a light emitting device, classified in class 257, subclass 86.

II. Claims 10-12, drawn to a method of making a strain compensating structure, classified in class 438, subclass 22.

III. Claims 13-14, drawn to a method for generating light, classified in class 438, subclass 24.

IV. Claims 15-19, drawn to a strain compensating structure, classified in class 257, subclass 87."

Applicants provisionally elect with traverse to prosecute the invention disclosed in Group I, claims 1-9. Applicants initially note that at least the requirement for election between Groups I and III appears to be improperly drawn. Applicants respectfully disagree with the statement in the Office Action that "[i]n the instant case the product as claimed can be made by another and materially different process. For instance, an oxide layer can be formed by various materially different processes such as thermal oxidation, CVD, etc."

Applicants respectfully submit that the device recited in claim 1 cannot be made by another materially different process than the process recited in claim 13, and is not a separate invention. Applicants respectfully submit that the Office Action is pointing to the manner in which the oxide layer is formed as the determinative feature of making the light emitting device of claim 1, and states that the device of claim 1 can be made using a different oxidation process. This however is incorrect. It is not the oxidation process, but rather the location of the strain compensating layer with respect to the oxide-forming layer, the

relationship of which appears in claims 1 and 13, that prevents the light-emitting device of claim 1 from being made by a process different than that described in claim 13.

Accordingly, the present election requirement for Species I and III is improper and Applicants request its withdrawal.

Applicants also initially note that at least the requirement for election between Groups II and IV appears to be improperly drawn. Applicants respectfully disagree with the statement in the Office Action that "[i]n the instant case the product as claimed can be made by another and materially different process. For instance, an oxide layer can be formed by various materially different processes such as thermal oxidation, CVD, etc."

Applicants respectfully submit that the strain compensating structure recited in claim 15 cannot be made by another materially different process than the process recited in claim 10, and is not a separate invention. Applicants respectfully submit that the Office Action is pointing to the manner in which the oxide layer is formed as the determinative feature of making the strain compensating structure of claim 15, and states that the oxide layer of claim 15 can be made using a different oxidation process. This however is incorrect. It is not the oxidation process, but rather the location of the strain compensating layer with respect to the oxide-forming layer, the relationship of which appears in claims 10 and 15, that prevents the strain compensating structure of claim 15 from being made by a process different than that described in claim 10.

Accordingly, the present election requirement for Species II and IV is improper and Applicants request its withdrawal.

Applicants respectfully request that claims 1-9 and 13-14; or claims 10-12 and 15-19 be examined.

CONCLUSION

Should the Examiner have any comment regarding the Applicants' response or believe that a teleconference would expedite prosecution of the pending claims, Applicants request that the Examiner telephone Applicants' undersigned attorney.

Respectfully submitted,

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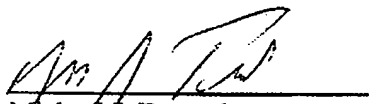
By: 

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